



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 16 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brad Austin
Landfill Supervisor
Marquette County Solid Waste Management Authority
600 County Road NP
Marquette, Michigan 49855

RE: Finding of Violation
Marquette County Solid Waste Management Authority
Marquette, Michigan

Dear Mr. Austin:

This letter advises you that the U.S. Environmental Protection Agency has determined that Marquette County Solid Waste Management Authority (MCSWMA) is in violation of the Clean Air Act (the Act) at the municipal solid waste landfill it owns and operates in Marquette, Michigan.

EPA is issuing MCSWMA a Finding of Violation (FOV) in accordance with Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), for violating Section 111(e) of the Act, 42 U.S.C. § 7411(e); the Standards of Performance for Municipal Solid Waste Landfills at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. § 60.750, *et seq.*; the Title V permitting provisions of the Act, 42 U.S.C. §§ 7661-7661f, and the regulations implementing Title V at 40 C.F.R. Part 70.

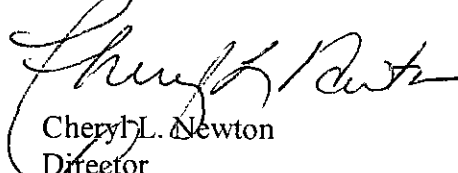
We have several enforcement options under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), including issuing an administrative compliance order, issuing an administrative penalty order, and bringing a civil or criminal judicial action. The option we select, in part, depends on the efforts taken by MCSWMA to correct the alleged violations and the timeframe in which you can demonstrate and maintain continuous compliance with the requirements cited in the FOV.

Before we determine which enforcement option is appropriate, we are offering you an opportunity to confer with us about the violations alleged in the FOV. This conference provides you the opportunity to present information on the alleged violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney

accompany and represent you at this conference. EPA hopes that this FOV will encourage MCSWMA to achieve and maintain compliance with the requirements of the Act.

If you wish to request a conference, please contact Ray Cullen of my staff at (312) 886-0538. You should make the request within 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days following your receipt of this letter.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Chris Hare, Supervisor
Michigan Department of Environmental Quality

Tom Hess, Chief
Michigan Department of Environmental Quality

S. Lee Johnson
Honigman Miller Schwartz and Cohn LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Marquette County Solid Waste
Management Authority
Marquette, Michigan

FINDING OF VIOLATION
EPA-5-11-MI-06

Proceedings Pursuant to Section 113(a)(3)
of the Clean Air Act, 42 U.S.C.
§ 7413(a)(3)

FINDING OF VIOLATION

The U.S. Environmental Protection Agency issues this Finding of Violation (FOV) to Marquette County Solid Waste Management Authority (MCSWMA) for violations at its Marquette, Michigan facility of Section 111(e) of the Clean Air Act (the Act), 42 U.S.C. § 7411(e); the Standards of Performance for Municipal Solid Waste Landfills at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. § 60.750, *et seq.*; the Title V permitting provisions of the Act at 42 U.S.C. §§ 7661-7661f, and the regulations implementing Title V at 40 C.F.R. Part 70.

STATUTORY AND REGULATORY BACKGROUND

A. New Source Performance Standards for Municipal Solid Waste Landfills

- 1) Section 111 of the Act, 42 U.S.C. § 7411, authorizes EPA to promulgate regulations establishing New Source Performance Standards (NSPS).
- 2) Section 111(e) of the Act, 42 U.S.C. § 7411(e), states that after the effective date of standards of performance promulgated under that section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.
- 3) The NSPS regulations apply to the owner or operator of any "stationary source" that contains an "affected facility," the construction or modification of which is commenced after the date of publication of any standard applicable to that facility. *See* 40 C.F.R. § 60.1(a).
- 4) Pursuant to Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), "stationary source" is any building, structure, facility, or installation which emits or may emit any air pollutant.
- 5) Pursuant to the NSPS at 40 C.F.R. § 60.2, an "affected facility" under the NSPS is, with reference to a stationary source, any apparatus to which a standard is applicable.

- 6) Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, on March 12, 1996, EPA promulgated the “Standards of Performance for Municipal Solid Waste Landfills,” codified at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. §§ 60.750-60.759 (MSW Landfills NSPS). *See* 61 *Fed. Reg.* 9919 (March 12, 1996). The MSW Landfills NSPS requires subject sources to, among other things, install and operate a system that collects and controls emissions from the landfill if the design capacity of the landfill, and the emissions rate of nonmethane organic compounds (NMOC) exceed certain thresholds.
- 7) An “affected facility” under the MSW Landfills NSPS is an MSW landfill that commenced construction, reconstruction, or modification on or after May 30, 1991. *See* 40 C.F.R. § 60.750(a).
- 8) The MSW Landfills NSPS at 40 C.F.R. § 60.751 defines “modification” as “an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.” *See also* 40 C.F.R. § 60.14(a).

1. Design Capacity

- 9) The MSW Landfills NSPS at 40 C.F.R. § 60.751 defines “design capacity” as “the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit.”

a. Design Capacity < 2.5 million Mg by mass (2.5 million m³ by volume)

- 10) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(a), the owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams (Mg) by mass, or 2.5 million cubic meters (m³) by volume, shall submit an initial design capacity report to EPA as provided in 40 C.F.R. § 60.757(a). Submission of the initial design capacity report exempts the owner or operator from having to comply with the requirements of the MSW Landfills NSPS at 40 C.F.R. §§ 60.752(b)-60.759.
- 11) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.757(a)(1)(i), for landfills subject to the MSW Landfills NSPS that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996, the owner or operator was required to submit an initial design capacity report to EPA no later than June 10, 1996.
- 12) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.757(a)(2)(ii), the initial design capacity report shall contain the maximum design capacity of the landfill: (a) as set forth by the permitting agency (along with a copy of the permit); or (b) when not specified by permit, as calculated using good engineering practices (along with a copy of the calculations and the relevant parameters).

- 13) Pursuant to the MSW Landfills NSPS at 40 C.F.R. §§ 60.752(a)(1) and 60.757(a)(3), a previously-exempt landfill under 40 C.F.R. § 60.752(a) shall submit an amended design capacity report to EPA within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million Mg by mass, or 2.5 million m³ by volume, which may result from either: (a) a permitted landfill volume increase; or (b) an landfill density increase documented in the annual recalculation mandated by 40 C.F.R. § 60.758(f).
- 14) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(a)(2), when there is an increase in the maximum design capacity of a previously-exempt landfill under 40 C.F.R. § 60.752(a) to a revised maximum design capacity equal to or greater than 2.5 million Mg by mass, or 2.5 million m³ by volume, the owner or operator shall comply with 40 C.F.R. § 60.752(b).

b. Design Capacity ≥ 2.5 million Mg by mass (2.5 million m³ by volume)

- 15) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b), the owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³, shall either: (a) comply with the requirements of 40 C.F.R. § 60.752(b)(2); or (b) calculate an NMOC emission rate for the landfill using the procedures specified in 40 C.F.R. § 60.754. An owner or operator electing to calculate the NMOC emission rate must annually recalculate the NMOC emission rate, except as provided in 40 C.F.R. § 60.757(b)(1)(ii).

2. NMOC Emission Rate

- 16) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.757(a)(1)(i), for landfills subject to the MSW Landfills NSPS that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996, the owner or operator was required to submit an initial NMOC emission rate report to EPA no later than June 10, 1996.
- 17) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.757(b), for landfills subject to the MSW Landfills NSPS, the owner or operator is required to submit an annual NMOC emission rate report to EPA.
- 18) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.754(a)(1), the landfill owner or operator shall calculate the NMOC emission rate using either: (a) the equation set forth in 40 C.F.R. § 60.754(a)(1)(i) if the actual waste acceptance rate is known; or (b) the equation set forth in 40 C.F.R. § 60.754(a)(1)(ii) if the actual waste acceptance rate is unknown.

- 19) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.754(a)(1)(ii), if the year-to-year solid waste acceptance rate is unknown, then the landfill owner or operator shall calculate the NMOC emission rate:

$$M_{NMOC} = 2L_0R(e^{-kc} - e^{-kt})C_{NMOC}(3.6 \times 10^{-9})$$

Where:

L_0 = methane generation potential = 170 m³/Mg;

R = average annual acceptance rate (Mg/yr);

k = methane generation rate constant = 0.05 year⁻¹;

c = time since closure = 0 for active landfills;

t = age of landfill in years;

C_{NMOC} = concentration of NMOC = 4,000 ppm as hexane.

a. NMOC Emission Rate < 50 Mg/yr

- 20) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.754(a)(2)(i), if the calculated NMOC emission rate is less than 50 Mg/yr, then the landfill owner shall: (a) submit an annual NMOC emission rate report to EPA as provided in 40 C.F.R. § 60.757(b); and (b) annually recalculate the NMOC mass emission rate as required by 40 C.F.R. § 60.752(b)(1).

- 21) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(1), if the calculated NMOC emission rate is less than 50 Mg/yr, then the landfill owner or operator shall among other things, annually recalculate the NMOC emission rate using the procedures specified in 40 C.F.R. § 60.754(a)(1) until such time as the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, or the landfill is closed.

b. NMOC Emission Rate ≥ 50 Mg/yr

- 22) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.754(a)(2)(ii), if the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, then the landfill owner shall either: a) comply with 40 C.F.R. § 60.752(b)(2); or b) determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the procedures provided in 40 C.F.R. § 60.754(a)(3).
- 23) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(2), if the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, then the landfill owner or operator shall: a) submit to EPA for its review and approval within one year of the calculation, an NMOC collection and control system design plan meeting the requirements of 40 C.F.R. § 60.752(b)(2)(i) in accordance with 40 C.F.R. § 60.757(c); b) within 30 months after the first annual report in which the emission rate equals or exceeds 50 Mg/yr, install an NMOC collection and control system meeting the requirements of 40 C.F.R. § 60.752(b)(2)(ii)(A) for an active collection system, or 40 C.F.R. § 60.752(b)(2)(ii)(B) for a passive collection system; c) route all the collected gas to an NMOC control system meeting the requirements of: (i) 40 C.F.R. § 60.752(b)(2)(iii)(A) for an open flare; (ii) 40 C.F.R. § 60.752(b)(2)(iii)(B) for a control system designed to reduce NMOC; or (iii) 40 C.F.R. § 60.752(b)(2)(iii)(C) for a

treatment system that processes the collected gas for subsequent sale or use; and d) operate the collection and control device installed to comply with 40 C.F.R. § 60.752(b)(2) in accordance with the provisions of 40 C.F.R. §§ 60.753, 60.755, and 60.756.

i. NMOC Collection and Control System Design Plan

- 24) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(2)(i), the NMOC collection and control system design plan must be: a) prepared by a professional engineer; b) meet the design requirements of 40 C.F.R. § 60.752(b)(2)(ii); c) include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of 40 C.F.R. §§ 60.753-60.758; and d) conform with the specifications for active collection systems set forth at 40 C.F.R. § 60.759, or demonstrate to EPA's satisfaction the sufficiency of the alternative provisions of 40 C.F.R. § 60.759.

ii. NMOC Collection System Requirements

- 25) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(2)(ii), an installed active or passive collection system shall: a) be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment; b) collect gas from each area, cell, or group of cells in the landfill in which the solid waste has been placed for a period of 5 years or more if active; and c) be designed to minimize off-site migration of subsurface gas. If the installed system is an active collection system, it shall also collect gas at a sufficient extraction rate.
- 26) To determine whether a gas collection system complies with 40 C.F.R. § 60.752(b)(2)(ii), the gas collection system must fulfill the design provisions of 40 C.F.R. § 60.755(a), which requires *inter alia* that the owner or operator shall: a) calculate the maximum expected gas generation flow rate from the landfill (40 C.F.R. § 60.752(b)(2)(ii)(A)(1)) using one of the equations provided for in 40 C.F.R. § 60.755(a)(1); b) design to the satisfaction of EPA a system of vertical wells, horizontal collectors, or other collection devices (for the purpose of determining sufficient density of gas collectors for compliance with 40 C.F.R. § 60.752(b)(2)(ii)(A)(2)), capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards; c) measure gauge pressure in the gas collection header at each individual well monthly (for the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with 40 C.F.R. § 60.752(b)(2)(ii)(A)(3)); d) monitor each well monthly for temperature and nitrogen or oxygen as provided in 40 C.F.R. § 60.753(c) (for the purpose of identifying whether excess air infiltration into the landfill is occurring).

iii. NMOC Control System Requirements

- 27) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(2)(iii), an owner or operator may choose to route all the collected gas to a control system that is: a) an open flare, provided that it is designed and operated in accordance with 40 C.F.R. § 60.18; b) a control system designed and operated to: (i) reduce NMOC by 98 weight-percent; or (ii) when an

enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 parts per million (ppm) by volume, dry basis as hexane at 3 percent oxygen; or c) a treatment system that processes the collected gas for subsequent sale or use, provided that its emissions from any atmospheric vents are routed to an open flare or a control system as described above.

iv. Operating Requirements for NMOC Collection and Control Systems

- 28) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b)(2)(iv), the landfill owner or operator must operate the installed collection and control system in accordance with the operating requirements and standards of the MSW Landfills NSPS at 40 C.F.R. §§ 60.753, 60.755, and 60.756.
- 29) The MSW Landfills NSPS at 40 C.F.R. § 60.753(a)-(f) requires that each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) shall: a) operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been put in place for 5 years or more if an active landfill; b) operate the collection system with negative pressure at each wellhead, except under certain conditions; c) operate each interior wellhead in the collection system with a landfill gas temperature less than 55° C and with a nitrogen level less than 20 percent or an oxygen level less than 5 percent; d) operate the collection system so that the methane concentration is less than 500 ppm above background at the surface of the landfill; e) operate the system such that all collected gases are vented to a control system designed and operated in compliance with 40 C.F.R. § 60.752(b)(2)(iii); and f) operate the control or treatment system at all times when the collected gas is routed to the system.

B. Title V Permitting Requirements

- 30) Title V of the Act, 42 U.S.C. §§ 7661 through 7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources,” and other sources made subject under Section 502(a) of the Act, 42 U.S.C. § 7661a(a). The purpose of Title V is to ensure that all applicable requirements, including NSPS requirements, are included in the Title V operating permit for the source.
- 31) Pursuant to 40 C.F.R. § 70.1(b), all sources subject to the Title V operating permit program, including “major sources,” shall have a permit to operate that assures compliance by the source with “all applicable requirements.”
- 32) Pursuant to Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), every owner or operator of a Part 70 source is required to timely submit an accurate and complete Title V permit application, including information required to be submitted with the application.
- 33) Section 502(a) of the Act, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.7(b) state that no Part 70 source may operate after the time it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a Part 70 program.

- 34) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(b), the owner or operator of a landfill subject to the MSW Landfills NSPS with a design capacity greater than or equal to 2.5 million Mg by mass and 2.5 million m³ by volume, is a “major source” subject to the Part 70 or 71 permitting requirements.
- 35) Pursuant to the MSW Landfills NSPS at 40 C.F.R. § 60.752(c)(1) and 40 C.F.R. § 70.5(a), an application for an operating permit under Part 70 or 71 is timely no later than June 10, 1997 for MSW landfills that commenced construction, modification, or reconstruction on or after May 30, 1991, but before March 12, 1996.
- 36) 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any “major source” located in a state that has received whole or partial approval of its Title V program.
- 37) On December 4, 2001, EPA granted Michigan full approval of its Title V Clean Air Act Permit Program, with an effective date of November 30, 2001. 66 *Fed. Reg.* 62949 (December 4, 2001).

FINDINGS OF FACT

- 38) MCSWMA is a municipal governmental authority, and is thus a “municipality,” as that term is defined in Section 302(f) of the Act, 42 U.S.C. § 7602(f).
- 39) MCSWMA is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
- 40) MCSWMA owns and operates a MSW landfill at 600 County Road NP, Marquette, Michigan (the Landfill).
- 41) The Landfill accepts nonhazardous waste from households and businesses in Marquette County, Michigan.
- 42) The Landfill is a “stationary source” under the meaning of Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).
- 43) On June 28, 1988, the Michigan Department of Environmental Quality (MDEQ) issued Construction Permit No. 0461 to MCSWMA to construct Areas IA, IB, IIA, IIB, IIIA, IIIB, IVA, IVB, VA, VB, VIA, and VIB at the Landfill, with a combined refuse volume of 4,060,000 cubic yards (yd³) (3,104,093 m³), and covering 53 acres.
- 44) MCSWMA began accepting waste at the Landfill in December 1989.

- 45) In May 1995, MCSWMA applied for an expansion of the Landfill to 62 acres by constructing new Cell 0 to the west and increasing the north and east boundaries of the permitted landfill area.¹ MCSWMA estimated in its application that the Landfill capacity after the proposed expansion would be 5,750,000 yd³ (4,396,190 m³) of refuse.
- 46) On June 11, 1996, MCSWMA submitted its initial design capacity report to MDEQ (Initial Report) in which it stated that the Landfill had a refuse depth of 151 feet, a refuse acceptance capacity of 30,450 tons per yr (tpy), and a density of 1,097 pounds per cubic yard (lbs/yd³), resulting in a maximum design capacity for the Landfill of 2,149,857 Mg. MCSWMA also calculated and submitted in the Initial Report, an NMOC emission rate of 35.1 Mg/yr based on the 30,450 tpy refuse acceptance capacity.
- 47) On July 7, 2004, MDEQ issued to MCSWMA Construction Permit No. 4065, which authorized the deletion of Cells 8 and 9, thus reducing the landfill's permitted capacity to 5,367,600 yd³ (4,103,825 m³).
- 48) On September 12, 2007, MDEQ issued to MCSWMA Construction Permit No. 4090, which authorized the deletion of Cell 7.
- 49) On September 17, 2009, issued Construction Permit No. 4105, which authorized the deletion of Cells 5 and 6, thus reducing the Landfill's permitted capacity to 3,267,746 yd³ (2,498,371 m³).
- 50) MCSWMA did not submit an annual NMOC emission rate report for the Landfill from June 11, 1996, until March 31, 2010, when MCSWMA submitted a Request for Applicability Determination to EPA (Applicability Determination) regarding the intended definition of "design capacity" in the MSW Landfills NSPS.
- 51) On September 29, 2010, EPA responded to MCSWMA's request and determined that the design capacity of the Landfill is the amount of MSW authorized by its most recent Part 115 Construction Permit, plus the MSW capacity of the authorized existing cells under its current Part 115 Operating License, plus any in-place waste not accounted for in these permits.

VIOLATIONS

A. Violations of the MSW Landfills New Source Performance Standards

- 52) The May 1995 expansion project set forth in paragraph 45 above, constituted a "modification," as that term is defined at 40 C.F.R. § 60.751.
- 53) The May 1995 expansion project set forth in paragraph 45 above, resulted in the Landfill becoming an "affected facility" under the MSW Landfills NSPS, as that term is defined at 40 C.F.R. § 60.750(a), thus becoming subject to the MSW Landfills NSPS requirements of 40 C.F.R. §§ 60.750-60.759, and the NSPS General Provisions of 40 C.F.R. §§ 60.1-60.19.

¹ In approximately 1995, MCSWMA began referring to the "areas" primarily as "cells," and reorganized Areas III through VI into Cells 3 through 9.

- 54) The May 1995 expansion project set forth in paragraph 45 above, resulted in the actual maximum design capacity exceeding the 2.5 million Mg mass and 2.5 million m³ volume thresholds of the MSW Landfills NSPS, and the NMOC emission rate of the Landfill exceeding the 50 Mg/yr of the MSW Landfills NSPS.
- 55) In the Initial Report MCSWMA submitted to MDEQ as set forth in paragraph 46 above, MCSWMA calculated a maximum design capacity below the 2.5 million Mg mass and 2.5 million m³ volume thresholds of the MSW Landfills NSPS.
- 56) In the maximum design capacity calculation for the Landfill contained in the Initial Report MCSWMA submitted to MDEQ as set forth in paragraphs 46 and 55 above, MCSWMA: (a) failed to include Type III construction and demolition waste; and (b) utilized an erroneously low landfill density.
- 57) The maximum design capacity of the Landfill exceeded the 2.5 million mass Mg and 2.5 million m³ volume thresholds of the MSW Landfills NSPS from March 12, 1996 until September 17, 2009.
- 58) The landfill permit issued by MDEQ on March 6, 1996 (Post-May 1995 expansion application) did not specify the maximum design capacity for the Landfill. Accordingly, MCSWMA violated 40 C.F.R. § 60.757(a)(2)(ii), and Section 111(e) of the Act, 42 U.S.C. § 7411(e), by submitting an initial design capacity report on June 11, 1996, which included a maximum design capacity that was not calculated using good engineering practices.
- 59) MCSWMA violated 40 C.F.R. § 60.757(b), and Section 111(e) of the Act, 42 U.S.C. § 7411(e), by failing to submit an annual NMOC emission rate report to EPA from 1997 through 2009.
- 60) For the time period from March 12, 1996 until September 17, 2009, MCSWMA violated 40 C.F.R. §§ 60.752(b), and Section 111(e) of the Act, 42 U.S.C. § 7411(e), by failing to either comply with the requirements of 40 C.F.R. § 60.752(b)(2), or to annually calculate an NMOC emission rate for the Landfill using the procedures specified in 40 C.F.R. § 60.754.
- 61) The NMOC emission rate of the Landfill exceeded the 50 Mg/yr of the MSW Landfills NSPS from March 12, 1996 until September 17, 2009, thus obligating MCSWMA to comply with the requirements of 40 C.F.R. § 60.752(b)(2).
- 62) MCSWMA therefore violated 40 C.F.R. § 60.757(b)(2), and Section 111(e) of the Act, 42 U.S.C. § 7411(e), by failing to:
- (a) submit an NMOC collection and control system design plan meeting the specifications of 40 C.F.R. § 60.752(b)(2)(i) to EPA within one year after March 12, 1996;
 - (b) install an NMOC collection and control system meeting the specifications of 40 C.F.R. § 60.752(b)(2)(ii) within 30 months of March 12, 1996;

- (c) route all the collected gas to a control system in compliance with the specifications of either 40 C.F.R. § 60.752(b)(2)(iii)(A), (B), or (C); and
- (d) operate in accordance with 40 C.F.R. §§ 60.753, 60.755, and 60.756, an NMOC collection and control system meeting the specifications of 40 C.F.R. §§ 60.752(b)(2)(ii)-(iii).

B. Violations of the Title V Permit Program

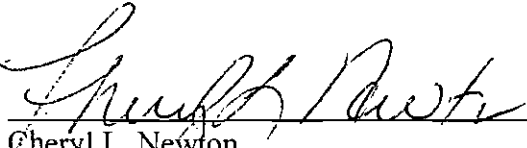
- 63) As set forth in Paragraph 45 above, MCSWMA undertook a modification to the Landfill in May 1995, which subjected the Landfill to the MSW Landfills NSPS.
- 64) At all times from May 1995 to September 17, 2009, the Landfill was a "major source," as defined by 40 C.F.R. § 60.752(b).
- 65) At all times from May 1995 to September 17, 2009, the Landfill was subject to Title V of the Act, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70.
- 66) MCSWMA violated Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a) by failing to submit a Title V permit application to MDEQ.
- 67) MCSWMA violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) by failing to operate the Landfill in compliance with a Title V permit issued by MDEQ.

ENFORCEMENT AUTHORITY

- 68) Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement or prohibition of, *inter alia*, any rule promulgated under the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21; Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Date

6/16/11


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Finding of Violation (FOV), No. EPA-5-11-M1-06,
by Certified Mail, Return Receipt Requested, to:

Brad Austin
Landfill Supervisor
Marquette County Solid Waste Management Authority
600 County Road NP
Marquette, Michigan 49855

S. Lee Johnson
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3506

I also certify that I sent copies of the FOV by first class mail to:

Chris Hare, Supervisor
Michigan Department of Environmental Quality
Upper Peninsula District
420 Fifth Street
Gwinn, Michigan 49841-3004

Tom Hess, Chief
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

on the 16th day of June, 2011.



Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 70091680 00007670 2331

CERTIFIED MAIL RECEIPT NUMBER: 70091680 00007670 2317